

United Rubber, Cork, Linoleum and Plastic Workers of America, Local 250, AFL-CIO (Mack-Wayne Closures) and International Union of Tool, Die and Mold Makers. Case 22-CB-4927

November 29, 1991

SECOND SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On July 29, 1988, the National Labor Relations Board issued a Supplemental Decision and Order in this proceeding,¹ directing the Respondent, United Rubber, Cork, Linoleum and Plastic Workers of America, Local 250, AFL-CIO, inter alia, to make whole the discriminatee, David O'Neill, for any loss of earnings suffered by reason of the Respondent's failure to represent him fairly.² On May 23, 1991,³ the Regional Director for Region 22 issued a compliance specification and notice of hearing alleging that a controversy had arisen over the amount of the backpay due to the discriminatee under the terms of the Board's Order, and notifying the Respondent that it must file a timely answer in compliance with the Board's Rules and Regulations.

On June 13, the Respondent filed an answer generally denying the allegations of the specification. On June 18, the Regional Director sent the Respondent a letter stating that the answer was deficient under the Board's Rules and notifying the Respondent that if a proper answer was not filed by June 27, the Regional Office would file for summary judgment.

In a subsequent telephone conversation, the Respondent asserted that it admitted all the allegations of the compliance specification and did not wish to litigate this matter further. The Respondent also noted that it would not oppose the General Counsel's Motion for Summary Judgment. The Regional Office confirmed this telephone conversation in a letter dated July 3.

¹ 290 NLRB 817.

² The make-whole order was conditioned on the forum in which the Respondent chose to argue the merits of the grievance underlying the unfair labor practice at issue.

³ All subsequent dates refer to 1991 unless specified otherwise.

On August 28, the General Counsel filed with the Board in Washington, D.C., a Motion for Summary Judgment. On September 3, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent has not filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board makes the following

Ruling on Motion for Summary Judgment

Because no response to the Notice to Show Cause was filed, the representations in the Motion for Summary Judgment are undisputed. One of those undisputed representations is that the Respondent does not wish to litigate this matter and has admitted all the allegations contained in the compliance specification. Accordingly, we grant the General Counsel's Motion for Summary Judgment, conclude that the net backpay due the discriminatee is as stated in the computations of the specification, and order that payment be made by the Respondent as set forth below.⁴

ORDER

The National Labor Relations Board orders that the Respondent, United Rubber, Cork, Linoleum and Plastic Workers of America, Local 250, AFL-CIO, its officers, agents, and representatives, shall pay David O'Neill the amount set forth in the compliance specification, plus interest computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and accrued to the date of payment, and shall pay the Pension Fund the amount set forth in the compliance specification, plus any additional amounts computed in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

⁴ We find this case distinguishable from *Mine Workers Local 1575 (Peabody Coal Co.)*, 295 NLRB 873 (1989), in which the Board found that the respondent union's answer containing a general denial of the allegations in the backpay specification was sufficient to require a hearing. Here, the adequacy of the Respondent's answer need not be addressed because, after filing it, the Respondent admitted all the allegations contained in the compliance specification.